Supreme Court, U.S.
FILED

10-562 AUG 13 2010

OFFICE OF THE CLERK

No.

In The

SUPREME COURT of the UNITED STATES

Clayton E. Neel, Petitioner

v.

State of Ohio, Respondent

On Petition For Writ Of Certiorari
To The Ohio First Appellate Court District

PETITION FOR WRIT OF CERTIORATI

CLAYTON E. NEEL
4201 Victory Parkway
Cincinnati, OH 45229
513-373-1621

QUESTIONS PRESENTED

1. Is a criminal indictment a liquid instrument? If the evidence presented during a criminal trial does not support the claim alleged in the indictment, should the Court be permitted to "tweak' that indictment during jury deliberations? The mission of a trial is supposed to be to administer justice and not to secure convictions at any cost.

2. Should the State be required to present evidence addressing the essential elements of an indictment in order to gain conviction?

3. Does the Trial Court have a duty to insure the right to a fair trial for a defendant and do the rules of witness misconduct and witness tampering apply to the State as well as to common citizens.

4. Does the Trial Court have a duty to insure the right to a fair trial by permitting a previously retained defense attorney to be presented before a jury as a prosecution witness when no substantive evidence can be gained or is expected to be gained from his appearance.

LIST OF PARTIES

This is a petition by Clayton E. Neel, which asserts relief against The State of Ohio.

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ISSUES OF THIS CASE RAISE SUBSTANTIAL CONSTITUTIONAL QUESTIONS AND ARE OF GREAT PUBLIC INTEREST

This matter raises constitutional questions and questions of great public interest concerning evidence needed for a conviction and a defendant's right to know with absolute certainty the charges that are being placed upon them.

STATEMENT OF THE CASE AND PROCEDURAL POSTURE

On January 12, 2007, an incident occurred in Hamilton County, Ohio which resulted in Clayton Neel, A Cincinnati Police Officer, being indicted. Cincinnati Police Officer Kathy Thompson testified that she stopped Samuel King for the offense of operating a motor vehicle while under the influence of alcohol. She was assisted in that arrest by Cincinnati Police Officer Eric Kaminsky, who responded to the scene in a separate police vehicle. While Officer Thompson proceeded to the police station with Mr. King to begin the appropriate paperwork, Officer Kaminsky drove Samuel King's vehicle to Mr. King's house. Officer Kaminsky then retrieved his own police cruiser and joined Officer Thompson at the station. Officer Kaminsky administered a Breathalyzer examination to Mr. King, which revealed a .086 reading, that result being over the legal limit of .080. Officer Thompson

testified that she completed and submitted the paperwork for Mr. King's charges and confiscated his drivers license. Mr. King was then driven home by Officer Kaminsky in Officer Kaminsky's privately owned vehicle. Officer Thompson next testified that she saw Samuel King a couple of weeks later, driving his automobile. She ran his record, but did not see any license suspension and ultimately pulled him over. After he was stopped, Mr. King produced his drivers license. Officer Thompson testified that she was confused by the fact that Mr. King had possession of his drivers license, and went into the police station to investigate the matter further, also informing her superiors. A few days later, she went to Samuel King's residence and re-arrested him. During her testimony, she identified the original paperwork presented to her by the prosecutor.

On cross examination, Officer Thompson admitted that not only did she not take the required photograph of Mr. King and that her report contained several mistakes, but she could not be sure that the case jacket was correctly assembled. She stated that she had been interviewed by Internal Affairs. Finally, She stated that she and all officers had access to the area containing the OVI paperwork for Mr. King, but only supervisors could access the actual ticket (citation) lockbox.

Samuel King testified that he knew Police Officer Clayton Neel through the Masons and Shriners organizations. He described being pulled over by Officer Thompson. He stated that he did not know if he had his drivers license with him when he left the police station, but also did state that Officer Neel gave them to him a few weeks later. He further testified that he went to court for the OVI offense, but his name was not on the docket.

On cross examination, Mr. King testified that Officer Neel never asked him to do anything improper or illegal, told him to come to court and tell the truth. He also testified that during his initial arrest, he asked on several occasions for the police officers on scene to contact Officer Neel on his behalf.

Cincinnati Police Officer Steven Edwards, testified that the original paperwork on Samuel King's OVI arrest showed up at his office, but that he had no idea how it had arrived there. He stated that he notified Internal Affairs upon discovering the paperwork, but that when they (Internal Affairs Officers) arrived to gain custody of that paperwork, no one in his office was questioned and no further investigation was ever conducted.

Cincinnati Police Officer Paul Glindmeyer testified that he fingerprinted the original paperwork on Samuel King's OVI arrest, and Officer Neel's fingerprints were not on them.

Cincinnati Police Sergeant Mark Fowler testified that Officer Neel acted as the property runner for the station (District Four) where Mr. King's OVI arrest was made and processed.

Sergeant Fowler did admit on cross examination that he never investigated or discovered who had delivered the paperwork to Officer Edward's office which is located across town approximately seven miles from the District Four station. Sergeant Fowler stated that during his 21 year career, he had never witnessed or had knowledge of, a OVI arrestee or any type of arrestee, who had their vehicle driven from the scene of an arrest to that person's home by a police officer. He also admitted that he could not ever recall, during the thousands of arrests he's been a part of, a person being afforded transportation in the arresting officer's privately own vehicle following an arrest.

Cincinnati Police Sergeant Stephanie Torlop admitted during her testimony that the prosecutor's police representative inside the courtroom, Sergeant Scott Albert, had given her information

pertaining to the trial prior to her appearance about what was occurring during Officer Neel's trial. Sergeant Torlop admitted that the information was then relayed to Police Administration and Internal Affairs, who then proceeded to intercept Police Officer Kaminsky, who was scheduled to testify on the following day. Sergeant Torlop presented telephone records related to Officer Neel's involvement on the night of Samuel Kings' OVI arrest.

On cross examination, Sergeant Torlop admitted that while she had obtained accurate cell phone records for Officer Neel, the home records that she submitted were for an incorrect telephone number. More importantly, Sergeant Torlop stated that the telephone records for the District Four police station were unavailable for the night of January 12, 2007. She admitted that she could produce records for January 11, 2007 or January 13, 2007, or for any other date, if asked to do so, but not for January 12, 2007. Finally, Sergeant Torlop stated that she did not attempt to obtain cell phone records for Officer Kaminsky.

Police Officer Kaminsky testified that Officer Neel was his training officer when he first came onto the department. Officer Kaminsky testified that he did not give Samuel King's driver's license to Officer Neel and that he only drove Mr. King's vehicle to his house and gave him a ride home in his personal vehicle because Mr. King was elderly and reminded him of his father.

On cross examination, Officer Kaminsky testified that he had been detained and transported to Internal Affairs on his off day, which was less than 24 hours prior to this court appearance. He also testified that even though it had been nearly two full years since Samuel King's OVI arrest, yesterday was the only time that anyone inside the police department had spoken to him regarding this case. He testified that the two Internal Affairs supervisors, who had detained and driven him to Internal Affairs and conducted an interview with him, were currently present in the courtroom. He stated that he did not know what would happen if he had said anything differently in court than what was said to Internal Affairs yesterday.

Marsha Tyner, a civilian supervisor in the Cincinnati Police Records Section testified that the serial number for the citation issued during Samuel King's OVI arrest was not included in the serial number log which was received at her office and that inclusion of this serial number on the log would have indicated that only the deliverer was responsible for the citations disappearance. She testified that the serial number did not appear on the log and that all of the listed tickets were in fact accounted for.

Cincinnati Police Sergeant Scott Albert, the prosecutor's in court representative, testified that he has been a police officer for over 20 years and had participated in thousands of cases. Sergeant

Albert admitted that he had indeed passed information from the trial to Sergeant Torlop, but that he did not mean any harm. Sergeant Albert described that he had no active part in the investigation of this case and was only a participant because he was the only person available to 'sit in' on the Internal Affairs interview of Officer Neel on April 23, 2007.

On cross examination, Sergeant Albert admitted that from January 12, 2007 when this case began to the date of his testimony on December 16, 2008, that improperly giving information to Sergeant Torlop was his only contribution to this case. Finally, he admitted that Officer Kaminsky would have been arrested if his testimony in court had differed from his Internal Affairs interview.

The defense Motion for Acquittal under Ohio Supreme Court Rules of Criminal Procedure – Rule 29 – based on the claim that the prosecution had not proven the elements in the indictments was denied.

Cincinnati Police Officer Gary Christie testified on behalf of the defense. He stated that he was the current property room officer at District Four and had been the backup for Officer Neel for the 5 years prior to Neel's arrest. He testified that only supervisors were able to access the lock box where the citations were kept.

Police Officer Clayton Neel testified in his own defense. He stated that he spoke with Officer Kaminsky on the night of Samuel King's original OVI arrest and that he asked him to do what he could for him (Mr. King), but did not intend that to mean anything illegal. He stated that he told Samuel King to go to court when Mr. King informed him about receiving a subpoena, emphasizing that the subpoena was not an invitation. He also stated that he received Mr. King's drivers license from Officer Kaminsky, but that he did not believe Officer Kaminsky had committed a crime in giving the license to him. Finally, he stated that he did not transport or place the paperwork on Officer Edwards' desk and that he did not believe that anyone else had done so either.

Officer Neel testified that during an OVI arrest, the citation or traffic ticket is the criminal complaint and without the presence of the complaint, all of the adjoining paperwork is useless. He stated that there were three separate sets of paperwork (not identical) which are created in an OVI arrest. One set is forwarded to the City of Cincinnati Prosecutor's office, one set to the police traffic unit and one set to the Hamilton County Probation Department. Officer Neel openly questioned why, in the State's case against him, no allegation has been made to indicate that either the prosecutor's office or the probation department OVI paperwork was stolen, but that the State's case incredulously hinged on the singular set which was distributed to the police department's own traffic unit.

On cross examination, Officer Neel denied that he had only recently decided to 'pin the blame' on Officer Kaminsky as the prosecution was openly accusing and that the prosecutor himself (Bill Anderson) was present at a meeting with defense counsel and Officer Kaminsky nearly a year ago where Officer Kaminsky's involvement was discussed. The prosecutor stated that Officer Neel was "lying" and that the described meeting never occurred.

Defense Attorney Peter Rosenwald, who represented Officer Neel on this case from April 25, 2007 to March 12, 2008, was called to testify by the prosecution as a rebuttal witness. Mr. Rosenwald testified that Prosecutor Bill Anderson was indeed present during the meeting with Officer Kaminsky as had been described by Officer Neel. Mr. Rosenwald, invoking his attorney-client privilege, refused to answer specific questions related to this case.

During deliberations, the jury asked the following question:

On all three counts, the words "including an Ohio drivers license" appears. Does it mean the OVI paperwork, reports and drivers license are a single package, all inclusive, or individual items that may be considered individually for each individual count?

The trial court, in open session, initially polled both counselors for an opinion on the jury's question. The prosecution stated that the State was in favor of permitting the jury to consider elements within each indictment individually. The defense simply stated that the jury had already received their instructions. The trial court then granted a two hour period for each side to produce case law supporting his stated position. When court re-convened three hours later, the prosecution reported that his office was unable to produce any such case law. Defense produced Ohio Revised Code 2901.04, which relates to the accused being strictly informed of his charges. The trial court next granted an extended period (19 hours) whereby both sides could again attempt to produce case law which supported their position. When court re-convened the following morning, the prosecution reported that its office had still been unable to find any case law which supported their position, but would continue to ask the court to allow the jury to consider elements within each indictment individually. The defense response was that the jury had already received their instructions and that the Ohio Revised Code was clear in its intent.

The Trial Court's decision was that "even though the state statute does not support this, I am going to allow it in this instance".

The trial court framed the following response to the jury:

The OVI paperwork, reports and drivers license are individual items that may be considered individually for each individual count.

The defense motioned for a mistrial, stating that the defense of these charges were tailored to address the indictments as they were originally presented. The motion was promptly denied.

On December 18, 2008, Police Officer Clayton Neel was convicted of tampering with records and tampering with evidence, but acquitted of theft in office. The trial court then sentenced Officer Neel to three years community control, with a condition of that being 120 days local jail time, no fine, no restitution, and $12,000 in court costs.

An appeal was timely filed on January 12, 2009 in the Ohio First District Court of Appeals and a judgment affirming the judgment of the trial court was entered on February 24, 2010.

The appellate court position is that practically all of the State's suppositions, which were not supported by any substantive fact or testimony were accepted as gospel. The appellate court's decision lists as fact, assertions that were not made at the trial level and thus could not be contained in any record. For example, the appellate decision stated that the missing or stolen paperwork was 'inexplicably' placed on a supervisor's desk, which is false and was never mentioned at anytime by anyone during the entire trial court proceeding. The

appellate decision also states that paperwork for the OVI arrest "had not been delivered to the necessary entities for prosecuting the case", yet the prosecution had only introduced testimony relating to the traffic unit's paperwork (which is not essential for prosecution) and did not address at any time during the proceedings the paperwork intended for the necessary entities – the city prosecution office and the probation unit.

The appellate court's position that the trial court had committed no abuse of discretion in denying the defense motion for a mistrial is in itself arbitrary and contradictory. In describing its decision, the trial court itself proclaimed it to be not supported by Ohio statute or case law. The state's position as well as that of the appellate court simply defies logic. If all of the items were individual elements, Officer Neel should have been charged with nine counts instead of three, before the conclusion of his trial. The defense contention is that the inclusion of the OVI paperwork wording in the original indictments were merely a prop to support the notion that a felony conviction of a police officer for merely returning a drivers license [which was given him by the arresting officer or a supervisor] to a citizen was highly unlikely. The question exists as to whether a drivers license can even be defined as evidence or a public record in an OVI case.

An appeal was timely filed with the Ohio Supreme Court on March 1, 2010, who declined jurisdiction on May 26, 2010. The Supreme Court of Ohio

categorized this case to be a ***"Discretionary Appeal (Non Felony)***. Mr. Neel was in fact convicted on two felony counts and is currently serving a felony sentence. It is from that decision which appellant now appeals.

FIRST ASSIGNMENT OF ERROR AND PROPOSITION OF LAW

The jury erred to the prejudice of the Appellant by finding him guilty of tampering with evidence and tampering with records, as those findings were not supported by sufficient evidence and the State failed to meet its burden of proof.

An appeal challenging the sufficiency of the evidence tests whether or not the evidence introduced at trial is legally sufficient to support a verdict. State v. Thompkins (Ohio 1997), 78 Ohio St. 3d 380, 678 N.E. 2d 541. Evidence is insufficient to support a conviction if, "after viewing the probative evidence and inferences reasonably drawn there from in the light most favorable to the prosecution, any rational trier of fact could [not] have found all the essential elements of the offense beyond a reasonable doubt." State v. Martin (Ohio App Ct 1983), 20 Ohio App 3d 172, 485 N.E. 2d 717. A claim of insufficient evidence, being about due process, raises a question of law, and does not allow a court to weigh the evidence. See Jackson v Virginia (1979, 443 U.S. 307.

In the case at bar, the jury found Officer Neel guilty of tampering with evidence and tampering with records despite the fact that no one saw him remove the OVI documents or place them in Officer Edwards office, his fingerprints were not found on the documents, and although acknowledging that he returned the drivers license to Samuel King, he did not believe that anything criminal had occurred. During the presentation of its case, the State failed to produce any evidence, did not attempt to identify a single instance, nor even bothered to mention at anytime during the entire proceeding anything that would indicate that Police Officer Clayton Neel had committed an offense of tampering. The word tampering was never spoken during the State's case. Instead the State focused all of its energies and efforts into proving through hypothetical scenarios that Officer Neel had in fact committed a theft offense when he handled the drivers license. The action and motivation of the accused must be proven beyond a reasonable doubt to justify a conviction of tampering. No reasonable trier of fact could find beyond a reasonable doubt that Police Officer Neel was guilty of these crimes. The conviction was not sustained by sufficient evidence and such conviction should be overturned.

SECOND ASSIGNMENT OF ERROR AND PROPOSITION OF LAW

The jury erred to the prejudice of the Appellant by finding him guilty of tampering with evidence and tampering with records, as those findings were contrary to law, and were against the manifest weight of the evidence.

In examining a claim that the judgment was against the manifest weight of the evidence, the test is much broader than the test involved with the claim of insufficient evidence. The court reviews 'the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the [trier of fact] clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered.' State v Martin (Ohio App Ct 1983), 20 Ohio App 3d 172, 485 N.E. 2d 717. This power to order a new trial should be exercised in the case in which the evidence weighs heavily against the conviction, see Tibbs v Florida (1982), 457, 485 N.E. 2d at 720-21.

In the case at bar, the jury clearly "lost its way' in concluding that Officer Neel was guilty of tampering with evidence and tampering with records. The State made absolutely no effort to prove any of the elements in their own indictments. If this court reviews the entire record, including the transcripts of the trial and weighs all the evidence, there can only be one conclusion. The jury clearly lost its way

and created a manifest miscarriage of justice. Therefore, a new trial should be ordered, as Officer Neel was convicted against the manifest weight of the evidence.

THIRD ASSIGNMENT OF ERROR AND PROPOSITION OF LAW

The trial court erred to the prejudice of the Appellant by overruling his Motion for Acquittal under Ohio Criminal Procedure Rule 29, as the State failed to meet its burden of proving that the Appellant was guilty of tampering with evidence and tampering with records.

In determining whether a trial court erred in overruling a motion for acquittal under Rule 29, the question is whether, after viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. State v Williams (Ohio 1996), 74 Ohio St 3d 569, 660 N.E. 2d 724, cert. denied, 117 S. Ct 109; State v Bay (Ohio App Ct 1998), 130 Ohio App 3d 772, 721 N.E. 421; State v Echols (Ohio App Ct 1998), 128 Ohio App 3d 677, 716 N.E. 2d 728. A motion for acquittal should be granted if evidence is so slight or of so little probative value that reasonable minds must have reasonable doubts as to guilt. State v Gaul (Ohio App Ct 1997), 117 Ohio App 3d 839, 691 N.E. 2d 760, dismissed, appeal not allowed, 70 Ohio St 3d 1457, 681 N.E. 2d 440.

There was insufficient evidence that Officer Neel tampered with evidence or with records. At the time of the Rule 29 motion, the evidence presented in this case was so slight that, as a matter of law, it was insufficient to support the jury's verdict. Therefore, the trial court erred in overruling Officer Neel's Motion for Acquittal, and his conviction should be overturned.

FOURTH ASSIGNMENT OF ERROR AND PROPOSITION OF LAW

The trial court erred to the prejudice of the Appellant by denying his motion for a mistrial, as the answer to the jury's question was erroneous.

The indictment and jury instructions for all three counts stated that the records or evidence that were tampered with or stolen were 'to wit: OVI paperwork and reports, including an Ohio drivers license.' In its question, the jury inquired as to whether the paperwork, reports and drivers license were one package that the prosecution must prove had been tampered with or stolen by Officer Neel. This question seemed to suggest that although the jury may have believed Mr. Neel had contact with the drivers license, he did not have contact with the remaining portions of the package. Therefore the answer to the question appeared to be instrumental in whether or not the jury found Officer Neel guilty. Ohio Revised Section 2901.04(A) provides that

code sections which define offenses should be strictly construed against the State and liberally construed in favor of the accused. The purpose and function of a complaint is to inform the accused of the crime of which he is charged. State v Villagomez (Ohio App Ct 1974), 44 Ohio App 2d 209, 337 N.E. 2d 167.

In the case at bar, the charging document, the indictment and the jury instructions all included language that the OVI paperwork and reports, including the drivers license were all one package and not individual items. Therefore, the trial court's answer to the jury's question was erroneous and prejudicial. Because of this error, the defense request for a mistrial should have been granted.

CONCLUSION

For the aforementioned reasons, the Appellant respectfully requests that this Court take jurisdiction of this matter.

Respectfully submitted,

Clayton E. Neel
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Petitioner

APPENDIX A

Judgment From The Ohio First Appellate Court District

Case No. C-090037

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

STATE OF OHIO,

APPEAL NO. C-090037
TRIAL NO. B-0703473

Plaintiff-Appellee,

vs.

JUDGMENT ENTRY

CLAYTON NEEL,

Defendant-Appellant.

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. [1]

Defendant-appellant, Clayton Neel, appeals the judgment of the Hamilton County Court of Common Pleas convicting him of tampering with evidence and tampering with records.

Neel was a Cincinnati police officer assigned to District 4. He was the district's "property runner",

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[1] See S.Ct.R.Rep.Op.3,App.R.11.1(E), and Loc.R.12.

and his duties included transporting paperwork from the district to the city prosecutor's office and to the police division's traffic unit.

Neel and Samuel King were members of the same fraternal organization. In the early morning hours of January 12, 2007, Cincinnati Police Officer Kathy Thompson arrested King for operating a vehicle under the influence of alcohol (OVI). In conjunction with the arrest, Thompson seized King's driver's license and attached it to the OVI citation. King was released, but the citation ordered him to appear in Hamilton County Municipal Court on January 17, 2007.

On January 29, 2007, Thompson saw King driving his car. Knowing that King's license had been seized, Thompson pulled him over and discovered that the license had been returned to him. After extensive interrogation, King stated that Neel had returned the license.

In the meantime, King had reported to municipal court on the date listed on the OVI citation, but his case was not on the docket. An investigation undertaken at District 4 revealed that the paperwork for King's OVI prosecution was missing and had not been delivered to the necessary entities for prosecuting the case.

After King had been rearrested for OVI, the paperwork from the original arrest inexplicably appeared on the desk of a supervisor for the police

division's traffic unit.

In response to questioning from the police division's internal-affairs unit, Neel admitted to having given the license to King. He stated that another officer in District 4 had given him the license to return to King, but he denied any knowledge of how the OVI paperwork had been misplaced.

A jury found Neel guilty of tampering with evidence and tampering with records, and the trial court sentenced him to 120 days in jail and community control.

On his first three assignments of error, Neel argues that his convictions were based on insufficient evidence and were against the manifest weight of the evidence. We address the assignments together.

In the review of the sufficiency of the evidence to support a conviction, the relevant inquiry for the appellate court "is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt."[2] To reverse a conviction on the manifest weight of the evidence, a reviewing court must review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of the witnesses, and conclude that, in resolving the

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[2] State v. Waddy (1992), 63 Ohio St. 3d 424, 430, 588 N.E.2d819.

conflicts in the evidence, the trier of fact clearly lost its way and created a manifest miscarriage of justice.[3]

R.C. 2921.12(A)(1), governing tampering with evidence, provides that "[n]o person, knowing that an official proceeding or investigation is in progress, or is about to be or likely to be instituted, shall *** [a]lter, destroy, conceal, or remove any record, document, or thing, with purpose to impair its value or availability as evidence in such proceeding or investigation." R.C. 2913.42(A)(1), governing tampering with records, states that "[n]o person, knowing the person has no privilege to do so, and with purpose to defraud or knowing that the person is facilitating a fraud, shall *** [f]alsify, destroy, remove, conceal, alter, deface, or mutilate any writing, computer software, data, or record."

In this case, the convictions were in accordance with the evidence. Neel admitted to having returned the license to King. Furthermore, his admitted return of the license to King, his relationship with King, and his access to the OVI paperwork provided ample circumstantial evidence that he had concealed the paperwork in an attempt to hamper King's OVI prosecution. Although Neel denied taking the paperwork and attempted to implicate another officer in the improprieties, we cannot say that the jury lost its way in finding him guilty.

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[3] State v. Thompkins, 78 Ohio St.3d 380, 387, 1997-Ohio-52, 678 N.E.2d 541.

In his fourth and final assignment of error, Neel argues that the trial court erred in overruling his motion for a mistrial. He contends that a mistrial was warranted when, in response to a jury question, the trial court informed the jury that it could find Neel guilty of tampering based upon the misappropriation of either the driver's license or the OVI paperwork and reports. Neel contends that the indictment had treated the items as a "package", thus requiring the state to prove that he had tampered with each item.

A decision regarding a motion for a mistrial lies within the discretion of the trial court and will not be disturbed absent an abuse of that discretion.[4]

In this case, we find no abuse of discretion. The indictment stated that Neel had tampered with items "to wit: OVI paperwork and reports, including an Ohio driver's license." Thus, the language concerning the driver's license merely provided an example of the records or documents that had allegedly been tampered with; it did not indicate that the items were inseparable. And the alteration or concealment of any single item was sufficient to support a conviction under the tampering statutes. Under these circumstances, the trial court's answer to the jury question was accurate. We overrule the fourth assignment of error and affirm the judgment of the

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[4] State v. Grimes, 1st Dist. No. C-030922, 2005-Ohio-203, 42.

trial court.

Further, a certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R.27. Costs shall be taxed under App.R.24.

Hildebrandt, P.J., Sundermann and Hendon, J.J.

To the Clerk:

Enter upon the Journal of the Court
on February 24, 2007 per order of the Court

_____
Presiding Judge

APPENDIX B

Decision From The Ohio Supreme Court

Case No. 2010-0373

The Supreme Court of Ohio

State of Ohio

Case No. 2010-0373

v.

Entry

Clayton Neel

Upon consideration of the jurisdictional memoranda filed in this case, the Court declines jurisdiction to hear the case and dismisses the appeal as not involving any substantial constitutional question.

(Hamilton County Court of Appeals;
No. C090037)

ERIC BROWN
Chief Justice

The Supreme Court of Ohio & The Ohio Judicial System

The Supreme Court of Ohio

CASE INFORMATION

Case: 2010-0373
Discretionary Appeal (Non-felony)
Claimed Appeal of Right

Filed: 03/01/10

Status: Case Is Disposed

State of Ohio v. Clayton Neel

APPENDIX C

Indictment From The Hamilton County, Ohio

Court of Common Pleas

Case No. B-0703473

THE STATE OF OHIO, HAMILTON COUNTY

COURT OF COMMON PLEAS

STATE OF OHIO

Plaintiff

Case No. B 0703473

-vs-

CLAYTON NEEL

Defendant

PROSECUTING ATTORNEY'S REQUEST

FOR ISSUANCE OF WARRANT

UPON INDICTMENT

TO THE CLERK OF THE COURT OF COMMON PLEAS:

CLAYTON NEEL has been named a defendant in an indictment returned by the Grand Jury.

Pursuant to Rule 9, Ohio Rules of Criminal Procedure, the undersigned requests that you or a Deputy Clerk forthwith issue a warrant to an appropriate officer and direct him to execute it upon the above-named defendant at the following address:

Hamilton County Justice Center, or at any place within this State.

Joseph T. Deters
Prosecuting Attorney
Hamilton County, Ohio

By: William Anderson
Assisting Prosecuting Attorney

THE STATE OF OHIO, HAMILTON COUNTY

COURT OF COMMON PLEAS

THE STATE OF OHIO

Case No. B 0703473

HAMILTON COUNTY, ss:

INDICTMENT FOR:
CT1: Tampering with Evidence
2921.12(A)(1)[F3]
CT2: Tampering with Records
2913.42(A)(1)[F3]
CT3: Theft in Office
2921.41(A)(1)[F5]

In the Court of Common Pleas, Hamilton County, Ohio, of the Grand Jury Term Two Thousand and Seven.

FIRST COUNT

The Grand Jurors of the County of Hamilton, in the name and by authority of the State of Ohio, upon their oaths do find and present that **CLAYTON NEEL, from on or about the 12th day of January, Two Thousand and Seven through on or about the 29th day of January, Two Thousand and Seven at the County of Hamilton and State of Ohio aforesaid, knowing that an**

official proceeding or investigation was in progress or was about to be or likely to be instituted, altered, destroyed, concealed, or removed a certain record, document or thing, to wit: OVI PAPERWORK AND REPORTS, INCLUDING AN OHIO DRIVER'S LICENSE with purpose to impair its value or availability as evidence in such proceeding or investigation, in violation of Section 2921.12(A)(1) of the Ohio Revised Code and against the peace and dignity of the State of Ohio.

SECOND COUNT

The Grand Jurors of the County of Hamilton, in the name and by authority of the State of Ohio, upon their oaths do find and present that **CLAYTON NEEL, from on or about the 12th day of January, Two Thousand and Seven through on or about the 29th day of January, Two Thousand and Seven at the County of Hamilton and State of Ohio aforesaid, knowing he had no privilege to do so and with purpose to defraud or knowing he was facilitating a fraud, falsified, destroyed, removed, concealed, altered, defaced, or mutilated a writing, computer software, data, computer data or record, to wit: OVI PAPERWORK AND REPORTS, INCLUDING AN OHIO DRIVER'S LICENSE, and the writing or the data, or the computer software, or record was kept by or**

belonged to a local, state or federal governmental entity, in violation of Section 2913.42(A)(1) of the Ohio Revised Code and against the peace and dignity of the State of Ohio.

THIRD COUNT

The Grand Jurors of the County of Hamilton, in the name and by the authority of the State of Ohio, upon their oaths do find and present that **CLAYTON NEEL, from on or about the 12th day of January, Two Thousand and Seven through on or about the 29th day of January, Two Thousand and Seven at the County of Hamilton and State of Ohio aforesaid, a public official or party official, used his office, permitted the use of his office, or assented to the use of his office in aid of committing a theft offense, to wit: OVI PAPERWORK AND REPORTS, INCLUDING AN OHIO DRIVER'S LICENSE,** in violation of Section 2921.41(A)(1) of the Ohio Revised Code and against the peace and dignity of the State of Ohio.

_____

Joseph T. Deters
Prosecuting Attorney
Hamilton County, Ohio

By: William Anderson
Assistant Prosecuting Attorney

Reported and filed this
7th day of May 2007

By: **Gregory Hartmann**
Clerk of Hamilton County
Common Pleas

A TRUE BILL

By: _____
Deputy

By: _____
Foreperson, Grand Jury